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Current Topics.

A former British Protectorate and the Story of a Passport.

BY THE recent visit of the PRINCE OF WALES to the Ionian Islands memories are revived of the time when those islands, famed in Homeric writ, were placed under the protection of Great Britain by the Congress of Vienna in 1815, and so remained till they were re-united after a long interval to Greece. During the protectorate much was done to improve the material conditions of the islands—by the construction of roads and by the setting up of more efficient courts, but the inhabitants never were happy under our regime, and again and again they agitated to be politically connected once more with Greece, which they always regarded as their mother country. Much negotiation took place before the British Government agreed that this should be done, and it will be remembered that Mr. GLADSTONE was sent out as Commissioner Extraordinary to inquire into the position, but even his genius failed at the time to solve the knotty problem. A few years later, however, the election of the son of the King of Denmark as constitutional King of Greece opened the door for the cession of the islands to Greece. The effect of the cession of 1863 was very displeasing to a number of English ladies who had married Ionians, and who by the change became Greek subjects. Out of this arose a curious incident. A lady of English birth married an Ionian during the time that the islands were under British protection. After the annexation the husband died and the widow returned to this country. One day she applied at the Foreign Office for a passport, but at first it was refused on the ground that by her marriage she had become a Greek subject. At this she became very irate, and maintained that as her husband was dead and she had returned to England, she had no longer anything to do with the Ionian Islands or with Greece; and as a passport was still refused she demanded to see someone of higher authority than the official who had arrived at this decision. She then saw one of the senior clerks who after patiently listening to her story assured her that the passport clerk was quite right, and again it was explained that by her marriage she had lost her British nationality and was now a Greek subject. Upon this she laughed and said, "Come, come; you really must not talk rubbish to me; I know nothing about your treaties or your naturalisation laws. All I know is that I am an English lady, and I demand a British passport as such." We are told that eventually a passport was granted to her, her good looks, good temper, and fascinating manners having overcome all official scruples—another instance of the success of "the importunate widow." The late Sir EDWARD HERTSLET who tells the story in his "Recollections of the Old Foreign Office," adds: "What the Home Office would have said had they known this at the time, I cannot say."

Robbery Under Arms.

THE REPEATED occurrence of the "hold-up" on roads by armed men at night naturally gives some disquiet here, though no one appears to trouble much about it in America. The question is thus raised whether the law is adequate. The answer must be that it is so if the offender is caught and convicted. Apart from hanging anyone who actually shoots and kills, s. 18 of the Offences Against the Person Act, 1861, prescribes a maximum penalty of penal servitude for life as the punishment for shooting or attempting to shoot any person, whether with intent to disable such person or avoid arrest. In fact, one who shot and wounded a policeman seeking to arrest him was very recently given the sentence of fifteen years' penal servitude, which should be long enough to deter any criminal. The modern bandit, however, appears to believe that his chance of escape from punishment warrants the risk. If then he is ready to use or threaten to use a firearm, the expedient of making it difficult for him to procure one is indicated. Our present law to this end is the Firearms Act, 1920, superseding and repealing the Pistols Act, 1903, which in turn may have been passed because a man who flourished a pistol about in a London street could only be prosecuted under the Statute of Northampton, 2 Edw. III, c. 3: see *R.* v. *Meade* (1903), 19 T.L.R. 540. The Firearms Act allows retailers only to sell pistols to persons vouched by a local chief of police, and such persons are forbidden to sell or to give away their weapons to unauthorised persons. If this Act could be strictly enforced a criminal could not obtain possession of a pistol unless he was lucky enough to find one belonging to an authorised person, and stole it. Actually, criminals appear to have little difficulty in obtaining weapons, and it may be suggested that some more stringent law is required to prevent the illicit trade in them. To this end, it might be found necessary legally to identify each weapon sold with a number stamped on it, and to keep it registered with its authorised possessor, who would have the duty of producing it if and when required, and immediately reporting its loss by theft or otherwise. If each pistol could be identified like a car, the fact that motor-bandits continually abandon stolen cars, worth perhaps thousands of pounds, is good evidence that unauthorised possession of a weapon would become more difficult and dangerous than at present. A pistol is, of course, a small thing, and easy to conceal, but that applies even more strongly to packets of cocaine, the illicit trade in which is kept down very effectively by police action.

Grand Juries Again.

A CORRESPONDENT in *The Times* of 16th August lodges a bitter complaint with regard to the present state of the law as to the composition of grand juries. The writer of the letter finds himself nominated as a future high sheriff, and

proposes to select his grand juries without the assistance of his under-sheriff. After some research and inquiry, he elicited the facts that a grand juror should be "a good and loyal man" of the country, "a gentleman of the best figure," and, possibly, the correspondent says, the owner of freehold property, although he believes it has been held he need not have any land at all. The actual qualifications in the various counties the writer states to be either friendship with the high sheriff, or being a country magistrate, or renting a hunting or shooting box. The question of qualifications, it is said in the letter, is of importance as "there is no right to challenge a grand juror on behalf of the prisoner." With regard to this statement there appears to be some doubt as to the law. In "Archbold's Pleading, Evidence and Practice in Criminal Cases," 28th ed., p. 73, it is stated that it is not clear that objection to grand jurors would not be taken by way of challenge: 2 Hale 155; 2 Hawk. c. 25, s. 16; *R.* v. *Lewis*, 7 St. Tr. 250; *R.* v. *Sheares*, 27 St. Tr. 255, 267; 8 Rep. Crim. Law Commrs. 1841, c. 2, art. 15. There appears, however, to be a certain amount of justification for the remainder of the complaint as to the state of the law. According to 2 Hale P.C. 154, grand jurors at assizes should be freeholders and persons of the highest station after peers of the realm. The authorities, however, are conflicting, for although it was held in *Blunt's Case* (1595) Cro. Eliz. 413, that grand jurors must be freeholders, the contrary also appears to have been held at a meeting of all the judges: *Anon* (1810) Russ. and Ry. 177; 168 E.R. 747. The statutory qualification for a grand juror is the same as that for a petty juror, and is set out in s. 1 of the Juries Act, 1825, in no part of which is it required that a grand juror shall be a freeholder. In the case of a borough having a separate court of quarter sessions or a borough civil court, the qualification for grand jurors is contained in s. 4 of the Juries Act, 1922, which merely provides that "the persons whose names are included in so much of the jurors book for the area comprising the borough as relates to the area of the borough shall be qualified and liable to serve on grand juries in the borough." If there is any justification at all for the present practice of choosing grand jurors on account of their social qualifications, that is in itself a sufficient reason for enacting a declaratory statement of the law on the matter in an amending statute.

Methods of Legal Study.

Is there any royal road to the acquisition of legal knowledge, or, if there is none such, can any one method be described as better than another? In an interesting address on "Culture and Anarchy in Legal Education" delivered by Professor J. D. I. Hughes, of the University of Leeds, at the annual meeting, recently held, of the Society of Public Teachers of Law, the abandonment of what was called "the present tradition in students' text-books" was advocated, these to be replaced by books introducing the beginner to the essential framework of law to the exclusion of the subtleties of case law. There is no doubt a good deal to be said for this suggestion in the case of those just entering upon their legal studies, but it is worth remembering that the students' books, as we know them, are a comparatively modern institution. In a note to his "First Book of Jurisprudence," Sir Frederick Pollock, who has done so much to improve the literature of the law, tells us that when he was beginning his studies, his grandfather, Chief Baron Pollock, wrote him as follows: "I myself read no treatises; I referred to them as collecting the authorities. I learned law by reading the reports and attending the courts, and thinking and talking of what I read and heard." Sir Frederick adds that it should be remembered that in the early part of the nineteenth century very few text-books aimed at either systematic arrangement or independent criticism; now, they do both, and the student of to-day is the gainer; but, after all, he who would make a good lawyer in the sense of one who can advise his clients wisely and can represent them in court well armed legally cap-à-pie must learn his work in the way that Chief Baron Pollock did, namely, by reading the reports, attending the courts, and thinking and talking of what he reads and hears. Good text-books, and there are many such which are listened to with great respect in court, will help to make the path of the student a little easier, but they will not of themselves make him a thoroughly equipped member of the profession. Law, however, may be, and indeed often is, studied by others than those who intend to become practising members of one or other branch of the profession, and Professor Hughes had them also in mind in the address to which reference has been made. He made an eloquent plea for the bridging of the gulf between the traditional academic treatment of law and the requirements of the profession, pointing out that the adoption of the vocational ideal need not lessen the cultural value of a legal education. More than once during the last few years Lord Atkin has stressed the importance of law as a factor in a general liberal education. For this purpose Professor Hughes's plea for text-books introducing the beginner to the essential framework of law to the exclusion of the subtleties of case law, deserves, and, indeed, has already received, attention, as witness, for example, Professor Jenks's admirable "Book of English Law," and the equally valuable "English Law and its Background" by Mr. Fifoot. Such books as these show that English has emerged from the stage of being—to quote the phrase coined by ex-Justice Oliver Wendell Holmes—"a ragbag of details," and has become in the main a well-ordered system grounded upon a recognition of the duty of meeting the ever-varying needs of the community.

The Widow's Mite.

An extraordinary appeal by a widow in Dublin to the English High Court from a decision of the English Minister of Health was heard by Mr. Justice Roche on 29th July, in *Re Echlin* (*Times*, 30th July). The Minister had decided that the applicant, who was over fifty-five years of age, was not entitled to a pension under the Widows', Orphans' and Old Age Contributory Pensions Act, 1929, in respect of the employment of her late husband, who died at Dublin on 8th April, 1905. During the three years before his death he had been employed as a solicitor's clerk at a salary not exceeding £160 a year, and that employment was employment of a kind in respect of which contributions under the Act of 1929 would have been payable if such employment had been in England and if the Act had been in force at that date. The Widows', Orphans' and Old Age Contributory Pensions Act, 1929, s. 1 (1), provides that "a widow shall . . . be entitled to a widow's pension payable in accordance with the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, if she has attained the age of fifty-five and is the widow of a man (*a*) who died before the 4th day of January, 1926, and as respects whom it is shown (ii) that his normal occupation was at some time within the period employment in respect of which contributions under the principal Act would have been payable if that Act had been in force at that time. It was contended on behalf of the appellant that if the Acts had been in force during the relevant period from 1902 to 1905 the words "United Kingdom" would have included that part of Ireland in which Dublin was situated, and that therefore the appellant was entitled to a pension. Mr. Justice Roche, however, decided that the Act of 1925 could only be extended back in point of time and not in point of place. To hold otherwise would be to make applicable to Ireland an Act which Parliament did not intend should apply to that country. His lordship therefore dismissed the appeal. It would, indeed, be a strange thing if citizens in this country had to pay income tax to support widows in the Irish Free State, especially after recent political events, so that the case of *Re Echlin* can certainly not be regarded as an example of "justice feasting while the widow weeps."

Criminal Law and Practice.

POLICE EVICTIONS.—In the recent case of *R.* v. *Tobin*, heard at Old Street Police Court on 4th August and 10th August, several points of exceptional importance were raised concerning the landlord's right of forcible entry into dwelling-houses and the scope of a police officer's duty in that respect. The defendant was charged under s. 4 of the Vagrancy Act, 1824, with having been found on enclosed premises at Northampton-street, Bethnal Green, for an unlawful purpose, and with obstructing a police officer in the execution of his duty. The facts were that possession of the premises was obtained in pursuance of an order of the county court. The bailiffs took possession and locked and padlocked the door and screwed up the windows. On the following day the landlord's agent visited the house in the company of a police sergeant in order to investigate a report which he had received that there was someone in the house. The defendant was found inside the house, but on being asked by the agent to open the door it was alleged that he set up a barricade of furniture. The defendant was also alleged to have refused to admit the police sergeant, who thereupon broke a panel of glass in the door and gained admittance. It was not suggested that the defendant was there for the purposes of stealing, and in fact it appeared that he was secretary of a local tenants' protection association and was on the premises in what he conceived to be the proper interests of the tenant and on the tenant's invitation. The solicitor appearing for the police suggested that the unlawful purpose was that of trespass, but the learned stipendiary magistrate held that the unlawful purpose must be a criminal one, and with regard to the alleged offence of obstructing the police in the execution of their duty he held that as the police officer had no duty to turn out a trespasser, there being no emergency, that charge could not be sustained. The learned magistrate pointed out that there would be very great danger in sanctioning the idea that the police could be called in to help to vindicate a civil right in such a case as part of their duty. Both charges were accordingly dismissed. It is clear law that the charge under the Vagrancy Act, 1824, s. 4, of being found on enclosed premises for an unlawful purpose cannot be sustained unless the unlawful purpose is the commission of some criminal offence: *Hayes* v. *Stevenson*, 25 J.P. 39. With regard to the second charge, under the Prevention of Crimes Act, 1871, s. 12, as amended by the Prevention of Crimes Amendment Act, 1885, of resisting a police officer in the execution of his duty, so far is it not a policeman's duty to break into premises at the request of the landlord, that it may be a criminal offence under the Statute of Forcible Entry, 1391 (15 Ric. 2, c. 2). In *Hemmings* v. *Stoke Poges Golf Club* [1920] 1 K.B. 720, the plaintiff was forcibly evicted from premises he occupied by virtue of his contract of service with the defendant, and the learned judges of the Court of Appeal, in reviewing the decisions on the question of the meaning of "forcible entry," noted the conflict of judicial opinion on the point. With regard to a policeman's duty, it has been said that a constable may break open doors to take a felon or suspected felon or prevent a probable felony, "or where a constable hears an affray in a house he may break in to suppress it, and may, in pursuit of an affrayer, break in to arrest him": "Chitty's Constables," 2nd ed., p. 59, and see 2 Hawkins P.C. c. 14, s. 8. There are, it is submitted, no other circumstances in which a policeman is entitled in the course of his duty to break open a private dwelling-house, and whatever be the practice in certain districts, it would be, as the learned magistrate said, a dangerous innovation for a court of justice to sanction it.

"THE POLICE LANGUAGE."

Mr. Fry, the Bow-street magistrate, addressing a police-constable, who was in the witness-box recently, said: "I wish you would give your evidence in English, and not in the police language."

Uniform Recognition of Marriage and Divorce.

A COMMITTEE of the International Law Association has done good work in considering the recognition of divorce proceedings and decrees in countries other than those in which they are instituted and pronounced. The importance of the problem attacked, however, lies chiefly in its relation to a larger one, namely, the matrimonial status of quite a numerous class. Divorce *a vinculo* being valid in the country where it is pronounced, the parties to it can validly re-marry by that law, unless, as nominally in Scotland, and perhaps with more actuality in South Africa, there is some veto, whether general or special, on the marriage of the respondent. If, however, such a divorce is held void in other countries, a re-marriage is also void in such countries, and confusion results which the Association very rightly desires to abolish. That confusion, however, also exists if, apart altogether from divorce, any marriage is held void in one country and valid in another, and the divorce problem is part of the larger one of making an end to this possibility. The hardships which may arise in such circumstances could not, perhaps, be better illustrated than by our own case of *Ogden* v. *Ogden* [1908] P. 46, in which the Court of Appeal told an Englishwoman: (1) That she was validly married to a young Frenchman who was then living in France with another woman as his lawful wife; (2) that she, being a domiciled Frenchwoman according to this finding, could not obtain a divorce in England although her husband had deserted her and was openly living with another woman. By English law her remedy was in the French courts. Since, however, the French courts had already held her marriage in England to the Frenchman to be a nullity, they could not dissolve something which they deemed to have no existence. In the result, she was left a wife without a husband. And it is quite easy to conceive of a similar result following a divorce recognised by the law of one country, but not of another. The ideal would, no doubt, be a law to ensure that a person validly married by the laws of one country should be validly married throughout the world, and to the same spouse. If this is not yet practicable—and the continued existence of polygamy amongst educated races of Hindus and Mohammedans certainly complicates the question—the monogamous races and countries could certainly go much further towards solving the question than they have yet done. A convention for this purpose, as recommended by the Committee, could, no doubt, include all nations practising or professing Christianity, but could also extend to Japan (see *Brinkley* v. *A.-G.* [1890] 15 P.D. 76), and even to so aggressively a non-Christian system as that of Russia: see *Nachimson* v. *Nachimson* [1930] P. 217 (74 SOL. J. 14). The so-called Christian polygamy of the Mormons, considered in *Hyde* v. *Hyde and Woodmansee* (1866), 1 P. & D. 130, is not now of any practical importance.

As to the most simple and overwhelmingly most numerous class, both of marriages and divorces, namely, that of two nationals domiciled in their own country, there should be no difficulty. These marriages and divorces should be recognised as valid everywhere, a principle to which the Court of Appeal gave full effect in the *Nachimson Case*, though the judges may have approved of the Russian system no more than those in the court below. On the whole, our law raises no difficulties here, and, if they occur, it may be surmised that they will come from quarters which entirely decline to recognise any kind of divorce.

The main problems no doubt arise on the mixed marriages, and on the marriages and divorces of persons outside their own nations or countries of domicil. Our own law is very strict in forbidding persons domiciled in England divorce elsewhere than in our courts, though a relaxation within narrow limits was registered in the Indian and Colonial Divorce Jurisdiction Act, 1926. Thus, however, did not affect our attitude to foreign divorce tribunals. Moreover, just as we strictly retain control over the marriages and divorces of persons domiciled

here, so we decline divorce jurisdiction in the case of persons domiciled elsewhere, even when the refusal leads to such injustice as that shown in the *Ogden Case*. That case also illustrates another conflict of law, namely, as to the validity of a marriage in a country where it is celebrated of a person forbidden by the law of his or her domicile or nationality to contract that marriage. In this matter our law is open to the criticism which may be colloquially called "having it both ways." Thus in the *Ogden Case* the marriage celebrated in England was held to prevail over the personal disability of the Frenchman according to his own law, but in *Brook* v. *Brook* (1861), 9 H.L.C. 193, the English personal disability was held to prevail over the foreign marriage. *Brook* v. *Brook* was quoted in *Ogden* v. *Ogden*, but distinguished by BARNES, P., on the ground that the prohibited degrees were on a footing of their own.

Brook v. *Brook* has of course been highly disapproved in America. The disability in that case was the legal relationship of brother-in-law and sister-in-law, marriages between persons so related being declared by a statute of HENRY VIII to be "contrary to the law of God." The classical American criticism of GRAY, C.J., will be remembered: "The judgment proceeds on the ground that an Act of Parliament is not merely an ordinance of man, but a conclusive declaration of the law of God; and the result is that the law of God, as declared by an Act of Parliament and expounded by the House of Lords, varies according to the time, place, length of life of parties, pecuniary interests of third persons, petitions to human tribunals, and technical rules of statutory construction and judicial procedure." Since the Deceased Wife's Sister's Marriage Act, 1907, *Brook* v. *Brook* no longer applies to that case, but presumably it would still apply to any other case covered by the Table of Affinity and unaltered by statute.

Quite a number of personal disabilities, according to various laws, may be enumerated, such as (1) the existence of a subsisting marriage (as where a foreign or other divorce is held invalid); (2) absence of parental consent for minors (as in the *Ogden Case*); (3) affinity (as in *Brook* v. *Brook*); (4) non-age (for example an English person under sixteen years of age is presumably incapable of marrying anywhere); (5) the veto on mixed marriages, as of black and white in some States of America; and (6) a religious vow of celibacy, which used to be legally binding in some countries, and still may be so. Possibly there may be others. The Tables of Affinity are, of course, by no means uniform, and, particularly, the law of the Roman Church includes relations of godparents. Presumably no marriage of a Roman Catholic to a near relative of a godparent would be recognised at Vatican City, nor would it have been recognised by the former laws of Roman Catholic countries, but some of them are less tied to their church than they were.

Our own criterion of divorce jurisdiction is domicil, and if an English couple *bonâ fide* went to live permanently in Russia or at Reno we would, no doubt, recognise their local divorce, though they might have some difficulty in satisfying the court as to their intentions. In some countries, however, the criterion is nationality, and denaturalisation may be more difficult than change of domicil. Our rigid law that a wife must take the domicil of a husband who, in going abroad, has deserted her, gives rise to injustice, and probably we should be quite ready to modify it. The marriage in England of persons under disability by their own law will need particular consideration, and the cases as to Mohammedans, Hindus, etc., such as *Chetti* v. *Chetti* [1909] P. 67, and *Re Mir-Anwaruddin* [1917] 1 K.B. 634, cannot be regarded as satisfactory so long as the English wives of such persons are denied English divorces if their husbands return to their native countries and practise polygamy. The scandal of easy divorce at Reno is one which good Americans should be glad to abolish, though whether the Federal Government has power to do it may be a difficult question. Either the British Empire or the United States could give a lead to the world in solving the problem if they solved it for their own territories.

The North Charterland Concession.

IN his recent report following on the inquiry into the questions arising out of the North Charterland Concession in Northern Rhodesia (Stationery Office, Colonial, No. 73), Mr. Justice MAUGHAM declared that no subject had any remedy against the Crown in any law court for what is done in a British Protectorate by Order in Council, since such order has legislative effect. The North Charterland Exploration Company (1910) Limited had admitted that they had no legal right against the Crown for compensation, but declared that they had a reasonable claim according to the ordinary principles upon which land is acquired for public purposes, and would have had a legal right but for the Northern Rhodesia (Crown Lands and Native Reserves) Order in Council of 22nd March, 1928. The complaint was that by that order there were set apart in perpetuity as native reserves nine areas of land to which the North Charterland Exploration Company were entitled under grant to their predecessors in title by the British South Africa Company. The company claimed that they were entitled to 10,000 square miles of land in the East Luangwa District of Northern Rhodesia under that grant. Mr. Justice MAUGHAM dealt with five questions which had been formulated by agreement between the parties for his decision. Shortly the answers were: (1) Immediately prior to 29th September, 1923, the date of the agreement between the Crown and the British South Africa Company, the title to the land was vested in the North Charterland Company; (2) Immediately before 29th September, 1923, His Majesty under the laws in force in Northern Rhodesia had the right to set apart such portions of the land as were thought fit for native reserves, without compensation to the North Charterland Company, provided that the reserves so set apart were not more extensive than those authorised by the Order in Council of 1900 or the subsequent Order of 1911. Both the right to make the grant and the duty to assign the reserves were of an administrative character; (3) At the date of the agreement of 29th September, 1923, the British South Africa Company neither had nor was held out as having authority by the North Charterland Company to agree to the setting apart of land as native reserves. The Secretary of State wrongly conceived that the British South Africa Company were authorised by the North Charterland Company to this effect and the British South Africa Company was not aware that the North Charterland Company was labouring under this misconception; (4) The North Charterland Company was not concerned in any way with the agreement as a whole, and certainly did not purport to ratify it. The company's acquiescence was partly due to a desire to have the title to the tract definitely admitted and partly to a desire to avoid the costly proceedings which might have been necessary to establish the title; (5) The North Charterland Company obtained the advantage that it could make grants of the whole of the land not included in the reserve to settlers and others, free from native rights. His lordship could not, in the absence of evidence on the point, decide whether the disadvantage of the diminution in the area with which the company could deal outweighed the advantage of the freedom from native rights. The report discloses a grave lapse on the part of the Colonial Office in failing to recognise the title of the North Charterland Company, and establishes the point that the company was to assign reserves only for about 30,000 natives inhabiting Northern Rhodesia. The number of natives in fact settled on the company's land was just over 151,000, so that morally, if not in law, the company's claim is substantial. The report stresses the good work done by the Native Commissioners and other government

servants and the officials and servants of the North Charterland Company. A roadless area inhabited by savages and wild beasts has been opened up for European settlement, transport facilities have been improved out of recognition, slavery and tribal warfare have been stopped, and crime has been greatly reduced. A record of this sort sheds added lustre on the name of the great founder of the colony and promises well for the future development of the Empire.

Company Law and Practice.

CXLIV.

DIRECTORS AND FRAUDULENT TRADING.

LAST week I referred my readers to a decision of MAUGHAM, J., on a section of the Companies Act which originally appeared in the Act of 1862, and had somehow escaped judicial construction until this year—this week I propose to deal with a decision of the same learned judge on a section which first made its appearance in the Act of 1928, and is now s. 275 of the Companies Act, 1929. The sidenote to the section, which aptly summarises its effect, is "Responsibility of directors for fraudulent trading"; and, put very broadly, the effect of the section is to confer on the court in a winding up a power of making, in respect of any director of a company the business of which has been carried on with intent to defraud creditors, or for any fraudulent purpose, a declaration of personal liability, without any limitation. There is another case in which the directors may have unlimited liability, but this is a somewhat special case, and is where the memorandum of association so provides (s. 146); while the actual liability in such a case, in the event of a winding up, is governed by the provisions of s. 157 (2). This latter provision is, of course, a purely voluntary one, in that no company need incorporate in its memorandum a provision for the unlimited liability of the directors—indeed, the number that do so must be very small indeed—but the provisions of s. 275 the declaration of unlimited liability may be made *in invitum*.

I do not wish unduly to weary my readers with the provisions of s. 275—I have above referred to the substance of sub-s. (1) of that section, which is its basis and foundation—but I think it would not be out of place that I should briefly mention the remaining features of the section which are of most consequence. The court has power to make the liability of a director, when it has made a declaration of liability under the section, a charge upon any debt due from the company to him, or upon any mortgage by the company in his favour, and to make orders for enforcing such charge; and the section makes it a criminal offence for a director knowingly to be a party to the carrying on of a business fraudulently.

Then we come to that provision in the section which is probably most familiar to the average practitioner, and that is the provision empowering the court to make orders prohibiting persons from being directors of, or taking part in the management of, companies. The persons who can be prohibited are persons whose liability has been declared under the section to be unlimited, and persons convicted of knowingly being a party to the carrying on of a business fraudulently; the maximum period of disqualification is five years from the date of the declaration of unlimited liability, or the conviction, as the case may be, and, for a breach of any such prohibitory order, the maximum penalty is two years. The reason for the familiarity of most of us with this section is by reason of the provision to be found in the form of article providing for the disqualification of directors, which provides (taking Table A as an example) that the office of director shall be vacated if (*inter alia*) the director becomes prohibited from being a director by reason of any order made under ss. 217 or 275 of the Act. Let us just turn to s. 217 to remind ourselves of its main features; this section also deals with fraud, but it covers fraud in the promotion or formation as well as fraud in relation to the company since its formation—and it therefore casts a net much wider than that cast by s. 275, but it can only be put into operation where the official receiver has made a further report as to fraud (see s. 182) and in cases where an order for the compulsory winding up of the company has been made; and the only possible applicant is the official receiver. To return to s. 275, there is little else in it which calls for mention at this juncture, though one may observe that it includes a definition of director which is very comprehensive, and adds something to the definition which applies to the whole Act, and which is found in s. 380 (1).

Now it is possible to turn to what MAUGHAM, J., has said as to this section, but first the facts of the case before him must be briefly recapitulated. The case is *Re William C. Leitch Brothers Limited* [1932] 2 Ch. 71. L had, in the year 1926, sold his business to the company for £5,000 satisfied by the allotment to him of 1,000 ordinary shares of £1 each, and a debenture for £4,000; the company also taking over the liabilities of L's business. L was appointed managing director at £1,000 a year, and in the first six months of the company's existence was credited with £1,000 as salary, and he also from time to time was paid dividends out of capital. By March, 1930, the company, to the knowledge of L, owed £6,500 which it could not pay, but after that L ordered goods to the extent of a further £6,000, which became subject to the charge in his debenture. In March and April, 1930, the company repaid to L sums which had been advanced to it by him; and on 9th May, 1930, L appointed a receiver under the debenture. The receiver appointed L manager, and the latter removed from the shops which he managed £260 worth of goods to a shop opened by him in Glasgow in his wife's name; he also collected debts due to the company to the amount of £1,300 and kept them on account of interest due to him under the debenture, giving receipts for them to the receiver, who dismissed him from his position of manager.

A compulsory winding up order was made, and the liquidator took out a summons asking for a declaration of unlimited personal liability against L, and that it might be made a charge on L's debenture, and also making certain claims for misfeasance. MAUGHAM, J., decided that the company was, from 1st March, 1930, carrying on business with intent to defraud creditors, to the knowledge of L, holding that, if a company continues to carry on business and to incur debts at a time when there is to the knowledge of the directors no reasonable prospect of paying those debts, it is, in general, a proper inference that the company is carrying on business with intent to defraud.

There is more than one difficulty arising in the construction of s. 275, but the particular one which there fell to be considered was whether the declaration of unlimited liability was to be in general terms, or in respect of a particular sum. MAUGHAM, J., held it must be for the latter, and in that case, having decided that the section was punitive, and that the court was not bound to limit the declaration to an amount not exceeding the debts of the creditors proved to have been defrauded, fixed it at £6,000; his Lordship points out that a declaration that the director should be liable in respect of debts incurred after some particular time would be almost useless because of the impossibility of determining, except at a late stage of the liquidation, what those debts were, and who it was to whom they were owed. But there is another, and perhaps deciding, factor, and that is that s. 275 provides that such a declaration is to be deemed to be a final judgment within the Bankruptcy Act, 1914, s. 1 (1) (*g*). I do not wish to take up further space at this late stage, but that clause of that sub-section clearly contemplates, as MAUGHAM, J., held, a judgment for an ascertained sum, which assists, if it does not render inevitable, a similar conclusion as to s. 275 (1).

No doubt we shall hear more of this case, for the destination of the sums recovered as between the company's creditors has yet to be decided.

(*To be continued.*)

A Conveyancer's Diary.

Protected Life Interest—Forfeiture under Order of Court.

An interesting application was recently made to the court under s. 57 of the Trustee Act, 1925, which raised a point of some importance.

It will be remembered that s. 57 gives a very wide power to the court and, in fact, seems to have been designed to empower the court to make almost any kind of order empowering trustees to do practically anything which is not definitely forbidden by the instrument creating the trust. That, at least, seems to me to be the purpose and intent of the section, which reads as follows:—

"(1) Where in the management or administration of any property vested in trustees any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

"(2) The court may, from time to time, rescind or vary any order made under this section or may make any new or further order.

"(3) An application to the court under this section may be made by the trustees or by any of them, or by any person beneficially interested under the trust.

"(4) This section does not apply to trustees of a settlement for the purposes of the Settled Land Act, 1925."

This section is wide enough for anything! It applies, of course, so far as land is concerned, only to trustees who hold upon trust for sale, although it does not in terms say so, and to all personalty settlements.

The court has, therefore, in such cases, as it appears, a complete discretion to make any order of any kind whatsoever with regard to the disposition of the trust property or the conduct of the management thereof. In fact there seems to be no limit to the power conferred, although I suppose that any actual direction contained in the trust instrument would have to be observed, or at any rate that the court would not make an order (which perhaps it could) contrary to any such directions.

The case which I have in mind is *Re Salting; Baillie-Hamilton* v. *Morgan* [1932] 2 Ch. 57 (76 Sol. J. 344).

A testatrix bequeathed a sum of money to her trustees upon trust for investment and to pay the income to the plaintiff the Hon. Charles Baillie-Hamilton until he should assign, charge or otherwise execute, do or suffer some deed, act or thing (other than giving a consent to a power of advancement in favour of his children) whereby the income or some part thereof would, if belonging absolutely to him, become payable to some other person or corporation, and upon failure of such trust in his lifetime then upon discretionary trusts for the benefit of the plaintiff or his wife or children, or if there should be no wife or children of the plaintiff in existence for the benefit of other persons.

Circumstances arose in which the plaintiff was constrained to apply to the court for authority to the trustees to raise the sum of £15,000 out of the capital of the legacy and pay and apply the same in payment of the plaintiff's debts and otherwise for his benefit upon his effecting and assigning to the trustees a policy of assurance to secure a like sum payable at his death, the policy and all moneys to be received in respect thereof to be held by the trustees upon the trusts, as far as applicable, from time to time affecting the capital of the trust legacy. Accordingly by an order dated in 1932, the judge being of opinion that the transaction thereby authorised was expedient within the meaning of s. 57 of the T.A., 1925, it was ordered that the trustees should out of the capital of the trust legacy raise the £15,000 and pay and apply the same as therein mentioned, and that the plaintiff should forthwith effect the policy of assurance and assign the same to the trustees, and that the trustees should stand possessed thereof upon the trusts affecting the trust legacy and that the trustees should pay the premiums on the policy other than the first premium (which had already been paid out of capital) out of the income of the trust legacy, unless the plaintiff should within seven days of each renewal date produce to the trustees a receipt for the amount of the premium.

The question was whether, upon the true construction of the will and in the events which had happened, namely, the making of the order to which I have referred, the plaintiff's interest under the will had determined.

In this connection reference may be made to *Re Brewer's Settlement* [1896] 2 Ch. 503.

That case was not altogether in point because there was no gift over on forfeiture, but it does help in other respects, and in fact was relied on by Eve, J., in *Re Salting*, as showing that where a tenant for life borrows trust funds from the trustees and pays it away to his creditors, he does not make the income payable to anyone else, and his action does not amount to an alienation of the income.

The main contention in *Re Salting* seems to have been that a forfeiture was brought about by that part of the order of court which authorised the trustees to keep down the second and subsequent premiums on the policy out of the income of the trust legacy in the event of the plaintiff failing to do so.

With regard to that, Eve, J., said, in effect, that he did not accept the view put forward on behalf of the plaintiff that the effect of an order under s. 57 was to introduce the terms of the order into the settlement, and read the same as if the order were in terms set out in the settlement. His Lordship said: "No doubt the making of such an order may, and often does, qualify the management and administration of the settled property; but in exercising the jurisdiction, the court must be cautious not to extend the operation of the order beyond what is reasonably necessary for the particular transaction and in determining, as I have to do here, the construction of an order made under s. 57, it is, I think, obvious that I must apply the same rules as would be applicable if the transaction had been the subject-matter of a binding agreement outside s. 57 altogether."

It is perhaps unfortunate that the learned judge made use of the expression "the settled property," since it is quite clear that s. 57 does not apply to settled land; but, of course, his Lordship was using that expression only in connexion with the case with which he had to deal, which was one of a settled sum of money.

The question then was whether the order operated to work a forfeiture because of the provision for payment of the premiums out of the income. Could it be said that the plaintiff had thereby done an act whereby any part of the income of the settled legacy became payable to any other person or corporation? The learned judge thought not; for so long as the plaintiff in fact paid the premiums and the trustees were not called upon to apply any part of the income of the settled legacy in so doing, the life interest of the plaintiff was not affected.

His Lordship said, however, that it would be incumbent on the trustees each year, in anticipation of the date on which the renewal premium would become payable, to retain in hand a sufficient part of the trust income to pay such premium and that they ought not to pay over the income so retained until they were satisfied that the premium had in fact been paid.

I take it, therefore, that if the person entitled to the income in such a case failed to pay any premium as it became due,

and the trustees were consequently obliged to pay it, there would be a forfeiture, but there would be no forfeiture unless and until that event happened. It appears that the mere holding back of a part of the income by the trustees to meet a premium would not of itself be sufficient to bring about a forfeiture unless the trustees in fact paid it. I am not sure how it would be if the trustees paid a premium on the day upon which it became due without waiting to see whether the person entitled to the life interest paid it within the days of grace. Possibly there would, even then, be no forfeiture if the person having the life interest refunded the money to the trustees in due time. It seems as though Eve, J., was of that opinion.

Landlord and Tenant Notebook.

Agency of Wife.

A few years ago I heard a county court judge declare, in the breezy manner adopted by some county court judges, that in housing matters husband and wife were still one. The case he was trying concerned an estate agent's claim for commission, and while the Married Women's Property Acts have not, of course, made specific mention of contracts affecting matrimonial homes, it is to be expected that implied authority to act as agent for the husband will be particularly easily established in such cases.

The authority of a wife of a tenant to deal with the landlord on his behalf does not, however, appear to have been judicially discussed except in one class of case, namely, when a notice to quit has been served by handing it to her. Two reported decisions are worth noting. In *Roe d. Blair* v. *Street* (1834), 2 Ad. & El. 329, one defendant had been served by handing the notice to his wife in the house occupied by them. Service on the other defendant had also been effected by handing the notice to his wife, but not on the demised premises. The first notice was held to be good, the second bad. In *Smith* v. *Clark* (1840), 9 Dowl. 202, the notice, delivered (presumably on the premises) to the wife with a verbal statement that it was a "paper of discharge" was held to have been effectively served. The important feature of these decisions is that they do not make the wife of a tenant her husband's agent under any circumstances, but merely establish a presumption that if a document addressed to her husband be left with her on the premises, it will reach him. This may account for the fact that no attempt has been made to establish the validity of a notice to quit given *by* the wife of a tenant on his behalf.

Apart from the question of agency, a tenant's wife is, of course, a complete stranger to the landlord, and, as was laid down by the House of Lords in *Cavalier* v. *Pope* [1906] A.C. 428, has no right to sue upon a contract to repair entered into by the landlord with her husband.

There is, perhaps, a slight recognition of unity in the Law of Distress Amendment Act, 1908, which, after conferring privilege from distress on third parties' property generally (s. 1), excepts (s. 4) articles belonging to the husband or wife of the tenant, and articles comprised in any hire purchase agreement. In *Shenstone & Co.* v. *Freeman* [1910] 2 K.B. 84, it was held, however, that a piano hired on hire-purchase agreement by the wife of the tenant was not excluded from privilege: the tenant must be a party to the agreement if the exception is to apply.

As regards negotiating a tenancy, while no doubt an agreement for the tenancy of a dwelling-house to be occupied by a married couple is seldom concluded without the concurrence of both parties, no reported case discusses the question of agency. There is, however, a case on surrender by operation of law in which the landlord, having accepted the key from the wife of the tenant, pleaded absence of authority: *Dodd* v. *Acklom* (1843), 6 M. & G. 672. The action was brought by the landlord for use and occupation, the defendant having taken the premises on a written yearly agreement. Differences of opinion arose, and the defendant's wife took the key to the plaintiff. When possession was originally taken she had received it from him, and this was one of the circumstances successfully relied upon to establish her authority. (For other cases illustrating implied surrender by returning keys, see 74 Sol. J. 724.)

The authority of a deserted wife to take a tenancy as agent for her husband has never been expressly decided, but there are several cases which suggest that, subject to the requirements as to suitability for her station in life, etc., she would be able to bind her husband in this way. Several husbands have been successfully sued for board *and lodging* in these circumstances. The oldest case is *Car* v. *King* (1700), 12 Mod. R. 372, in which one of the difficulties still encountered in credit transactions with married women was alluded to; it was pointed out that if the wife were not deserted, but had eloped, those supplying her did so at their peril. *Reed* v. *Moore* (1832), 5 C. & P. 200, was a straightforward case; the wife left because of ill-treatment, and the plaintiff obtained a verdict against the husband in *assumpsit*. In *Liddlow* v. *Willmot* (1817), 2 Strak. 86, the position was more complicated: the plaintiff sued for board and lodging supplied to a deserted wife who had just died, and had been so deserted for some thirty years without calling upon the defendant for financial assistance, she having means of her own. As he appeared to be living on a much more modest scale the action failed. And in *Cope* v. *Steers* (1849), 14 L.T. O.S. 67, the claim was brought by the defendant's father-in-law, the ill-treated daughter having returned to her parents; it was carefully pointed out to the jury that they must find, if their verdict was to be for the plaintiff, that the daughter had come back on a contract. The jury were so satisfied.

Our County Court Letter.

ALIMONY ARREARS AND INSOLVENCY.

In *Re Holt, ex parte Holt*, a question on which His Honour Judge Beazley stated that there was no previous authority in the Reports was on 3rd August the subject of a reserved judgment in the Scarborough County Court. The short point was whether arrears of alimony under an order made against a deceased husband whose estate was being administered in bankruptcy were debts provable in the administration. The occasion was an appeal from the decision of the Official Receiver to admit the deceased insolvent's widow to vote as a creditor for £276 7s. 8d. only on a proof of £813 5s. 1d. The disallowed items were two amounts of £201 15s. 9d. and £235 1s. 8d. The widow had obtained on 21st March, 1916, an order for alimony at 35s. per week. By an order in the Chancery Division of 10th June, 1929, arrears amounting to £411 15s. 9d. were made payable at the rate of £10 per month, and at the date of death there was still £201 15s. 9d. of that amount unsatisfied. His Honour ordered that the applicant be admitted to vote for the sum of £568 13s. 8d., consisting of the amount of £201 15s. 9d. unsatisfied arrears under the order of 1929, one year's arrears of alimony at 35s. per week with regard to the period after 10th June, 1929, and £275 7s. 8d. being the amount of the admitted items less £100, the value of the security. There are a number of cases which deal with the question whether alimony or arrears of alimony may be proved for in bankruptcy. In *Linton* v. *Linton*, 15 Q.B.D. 239, it was held that future payments of alimony were not provable, as the order "may be varied from time to time according to the means of the husband, and there is therefore no means of putting a value upon the future payments for the purpose of a proof in bankruptcy," per Baggallay, L.J., at p. 245. In *Re Hawkins, ex parte Hawkins*, [1894] 1 Q.B. 25, it was held that arrears of alimony which

became due after a receiving order had been made against the debtor were not provable by the wife in the debtor's bankruptcy, and in *Kerr* v. *Kerr* [1897] 2 Q.B. 439, the same decision was reached with regard to arrears accruing due before the making of a receiving order. In *Re Stillwell, Brodrick* v. *Stillwell* [1916] 1 Ch. 365, the decision was that a widow can recover arrears of alimony due to her at the death of her husband, if his estate is solvent. In that case, Mr. Justice Sargant said (at p. 368): "The case of the liability of an insolvent husband's estate for arrears of alimony may arise hereafter, and may need separate consideration." It will be interesting to have a decision on this point from a higher tribunal.

AUCTIONEERS' LIABILITY FOR CONVERSION.

THE difficulty in assessing the quantum of damages was illustrated in the recent case of *Jackson's Stores Limited* v. *Langford*, at Shrewsbury Court Court, in which the claim was for £9 19s. 6d. as damages for the conversion of furniture. The latter had been supplied on the hire-purchase system by the plaintiffs to a third party, who (although he would not have acquired any ownership until all the instalments had been paid) nevertheless sold the goods (on leaving the town) to the defendant for £5. The plaintiffs' case was, however, that the furniture was new in 1927, and the value (even at second-hand) was £16. The defendant's case was that (*a*) the vendor had produced a document, purporting to be a receipt for the furniture, (*b*) having agreed to sell the goods by auction, the defendant gave the vendor £5 10s. on account, but the amount realised was only £3 15s. His Honour Judge Frank Davies gave judgment for £5 10s. and costs.

Land and Estate Topics.

BY J. A. MORAN.

THE conversion of War Loan is bound to have a good effect on the market for real property when the holiday season is over. In addition, the prospect of lower mortgage repayments is likely to influence the swing of the pendulum. Bricks and mortar are not stocks nor shares, and it always takes a little time before outside influence affects competition one way or the other. The general disposition among investors and speculators just now is to take stock of the situation. The outlook is bound to be a favourable one, and property-owners should lose no time in making the most of the opportunities that are bound to come their way in the very near future. Freehold ground rents are sure to be much sought after. It is no use, however, to sit still and wait for the purchasers to come along: the auctioneer who has the goods to deliver must follow the example of the wideawake window dresser.

The question of the rate of interest charged by building societies has come to the front through the successful operation of the War Loan conversion scheme, and its effect on the interest obtainable on other class securities. Building societies have hitherto been accustomed to charge 6 per cent. for money advanced on mortgage, and it is now being recognised that this is a higher rate than is justifiable in the altered circumstances.

In view of the fact that several building societies outside the Metropolitan area have expressed their intention of lowering the rates charged to borrowers, it had been anticipated there would be some indication from last week's Conference of the trend of interest rates in the future. But evidently no combined decision has been come to yet.

The decision of the Willesden magistrate that he does not see how a landlord can legally prevent a twelve year old son from succeeding as tenant on the death of the parent may be correct in law, but there is no doubt that Parliament entirely overlooked such a ridiculous eventuality. If a twelve year old boy, why not a six year old lad, neither of whom could be held responsible for rent or other tenancy obligations.

Inquiries after factories and factory sites are as numerous as ever, and in some instances speculators' efforts have reaped a rich reward. The Waddon Factory estate, at Croydon, is a case in point. During the past half-year the whole of this site has been dealt with by the agents, and only two lots remain to be dealt with. The estate was given its name after its purchase from the Government last year by Town Investments, Limited. Before that it was known as The National Aircraft Factory, and its construction during the war was said to have cost about £1,000,000.

Mr. H. C. WEBSTER, the Official Arbitrator, has published his award in the claim for compensation arising out of the damage to the Hall Estate, Hatch End, caused by the erection of pylons and cables by the Central Electricity Board. The estate, which is about forty acres, was purchased in 1928 for £20,000. Mr. J. G. WEALL, a chartered surveyor, valued the property at £22,868 19s., or, with the pylons and cables, at £12,807 12s., which means a depreciation figure of £10,061 7s. The arbitrator has fixed £3,495 as compensation, the acquiring authority to pay £200 towards the claimants' costs and the fees on award.

Mr. ARMAND TEMPLE POWLETT, the new President of the Land Agents' Society, is a son of the late Admiral POWLETT. He was originally intended for the Royal Navy, but owing to a breakdown in health he left the service. Turning to the land, he became a pupil of Mr. F. W. HALL, who was at that time agent to the Marquis of Zetland's Yorkshire properties, and in 1911 he became agent to the Earl of Sefton's Croxteth and Abbeystead estates. He held that position until 1924, when he resigned and started a general practice at Bath. He shares with Mr. F. W. HALL the distinction of being one of the youngest members of the Society to be elected to the Presidency.

Reviews.

The Solicitors Act, 1932. By W. E. WILKINSON, LL.D. (Lond.), a Solicitor of the Supreme Court. Medium 8vo. pp. v and 49 (Index xxiv). London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

Although the Solicitors Act, 1932, which will come into force on the 1st October next, does not make any alteration in the law, it consolidates the whole of the existing Statute law relating to solicitors previously contained in twenty-seven Acts passed between the years 1839 and 1928. The new Act will greatly simplify matters for anyone who has to refer to the law on the subject in future, and Mr. Wilkinson's work, which contains a King's Printer's copy of the Act, together with Index and Tables, should simplify matters still further. The Index is as full as possible, and the two Tables show what repealed enactments are reproduced or represented by each of the sections of the new Act, and by what sections of the new Act the various repealed enactments are reproduced or represented. The addition of these Tables should greatly increase the usefulness of the book.

The Solicitors Act, 1932. Index compiled by H. A. C. STURGESS, Librarian to the Middle Temple. 1932. Medium 8vo. pp. (with Index) 61. London: Eyre & Spottiswoode (Publishers), Ltd. 3s. 6d. net.

This is another useful book containing the full text of the Act, together with an Index carefully compiled by Mr. Sturgess, the Librarian to the Middle Temple. The book is neatly bound in red cloth, and contains a list of Statutes not incorporated in or repealed by the new Act. It does not, however, contain the two Tables which are mentioned above as being such a feature of Mr. Wilkinson's book.

POINTS IN PRACTICE

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Pack of Hounds—Licences Required—Liability for Failure to Take Out in Past Years.

Q. 2547. A pack of beagles has been hunting for three or four seasons. No dog licences for any of the hounds have ever been taken out. It is understood that last season or the season before the Master saw the local police inspector and asked whether he should not take out licences. The inspector said he would let him know something in due course, but has not communicated with him again. It seems clear that the committee of the hunt, represented by the Master, could be made to take out the proper licences for the current year and could be fined for every hound in the pack (except whelps within the operation of the Customs and Inland Revenue Act, 1878, s. 20). The following further questions arise:—

(*a*) Can fines be levied for any past year or years?

(*b*) Can the cost of licences be recovered by the Revenue for any past year or years?

It is assumed that the inaction of the police would not necessarily be any protection.

A. We agree that the Master, as representing the hunt committee, is responsible for taking out licences for all hounds except puppies under twelve months, not as yet entered or used with pack. By s. 4 of the Dog Licences Act, 1867, the penalties are excise penalties and may be recovered by county and borough councils; or under the Customs and Inland Revenue Act, 1878, s. 23, by the police before a court of summary jurisdiction. Penalties are divisible in the latter case between the council and the local police superannuation fund. There is no doubt that the licence duties are recoverable for the past two or three years; and penalties might be sued for also. There are powers of mitigation (see S.J. Act, 1879 (s. 4)), and Customs, etc., Act, 1878 (s. 23). The inaction of the police carries with it no legal protection, but would probably have a sufficient moral effect to ensure a reasonable settlement of the whole matter if it be laid frankly and fully before the Excise authorities. We should certainly recommend that course to be taken without delay.

Restrictive Covenant not to Use Building as Cinema.

Q. 2548. The owners of a theatre, who also own cinemas in the same town, but not actually adjoining the theatre, propose to let the theatre on a seven years' lease containing an option to purchase, the lessees entering into a covenant not to use the premises as a cinema but only for the purpose of stage plays. The purpose of this covenant is, of course, to protect the lessors' other cinemas. We assume that this covenant would be quite valid and enforceable, and that no question of its being in restraint of trade could arise. Would the position be different should the lessees exercise the option to purchase and if the property was conveyed to them and the lessees in the conveyance entered into a similar restrictive covenant (the lease would, of course, provide for such a covenant being inserted in the conveyance)? Could such a covenant be held to be unreasonable or in restraint of trade or would it be void on any other ground? Is it possible for the lessees (or the purchasers, as the case may be) to obtain relief against such a covenant?

A. There is no legal objection to the covenant, which would be binding on the lessee, and on the purchaser and subsequent owners subject to due registration as a land charge. The covenant should be expressed in the conveyance (and in the option) to be for the benefit of the covenantors and their successors in title owners for the time being of the cinemas or any of them. No relief could be obtained by the lessee, nor by the purchaser of the freehold, except under s. 84 of L.P.A., 1925.

Implied Easement on Lease for Pipe to Project over Lessor's Property—Repair.

Q. 2549. A grants to B a building lease in 1905 of a piece of land, together with power to erect buildings in accordance with plans and elevations approved by A. The adjoining property is leased by A to C. The existing troughing of B's property projects over the property of C. A stench pipe and overflow pipe are also affixed to the wall of B's property overhanging the property of C. B's lease does not contain any provision authorising him to enter on the adjoining property for the purpose of carrying out repairs to his own property.

(1) Has B an implied easement over C's property in respect of the overhanging troughing and pipes?

(2) It is assumed that, in the absence of express provision in the lease, B has no implied right to enter upon C's property for the purpose of carrying out repairs to the troughing and pipes.

A. It is understood from the question that A granted the lease to B and subsequently to the erection of B's house. A granted a lease of adjoining property to C. Under these circumstances it is considered that, if the house was built by B with A's approval, both as to site and overhang of pipes, B acquired an easement as against A to which C's subsequent lease would be subject. The right to have such an easement includes the right of entry on the servient tenement for repair, if such entry is necessary: *Pomfret* v. *Ricroft* (1668), 1 Wms. Saunders 322, referred to in *Goodhart* v. *Hyett* (1883), 25 Ch. D 182, and *Buckley* v. *B.* [1898] 2 Q.B. 608. If, however, the lease to C was prior in date A could have had no right (unless reserved in C's lease) to authorise B to build over the boundary of the land leased to C, and the erection of the pipes would constitute a trespass against C, and even if C is debarred by length of time from an action, no legal easement would result and B, it is considered, could not claim a right of entry for repair, save, possibly, if C complained of a nuisance by non-repair.

Highway Obstructions.

Q. 2550. With reference to your article on the subject of highway obstructions and their removal in your issue of the 23rd July, 1932, I should value your opinion on the following point. The S. Urban District Council leased from the lord of the manor the foreshore in front of S. From the grant is expressly reserved the right to cart or otherwise take away shingle. The foreshore in question is bounded on the land side by a low wall, erected by the council many years ago, which helps to retain the shingle from spreading on to the road which is immediately on the other side of the wall. Almost every winter, whenever there is a severe storm or high wind, a large quantity of shingle is washed by the sea over the edge of the wall and on to the road, causing an obstruction to traffic. Hitherto it has been the practice of the council to remove the shingle, throwing it back over the wall and on to the foreshore again. The question is: could

the council call upon the lord of the manor to remove this obstruction?

A. We think that inasmuch as the shingle belongs to the lord of the manor it may well be that the local highway authority could call upon him to remove the obstruction, just as in the case of a landslip as mentioned in the article referred to; but there might be difficulty in compelling obedience to the demand unless there is really serious obstruction. We have no knowledge of any precedent to this particular case.

Obituary.

SIR WILLIAM CLEGG.

Sir William Edwin Clegg, solicitor, an ex-Lord Mayor of Sheffield, died in a nursing home there on Monday, the 22nd August, at the age of eighty. He was admitted a solicitor in 1874, and was a member of the firm of Messrs. Clegg & Sons, of Sheffield. He it was who defended the notorious Charles Peace at the police court proceedings at Sheffield. Sir William was a member of the Sheffield City Council for forty years, being an Alderman for thirty-four years, and held the position of Lord Mayor in 1898. He was knighted in 1906. He was Chairman of Sheffield Education Committee and was one of the founders of Sheffield University, of which he became a pro-Chancellor. He was also a Justice of the Peace for Sheffield and West Riding and Chairman of the City Licensing Justices. The honorary freedom of Sheffield was conferred on him in 1922. In his early days he was a good athlete, and became an international football player.

MR. G. P. SANDEMAN.

Mr. George Paris Sandeman, solicitor, who died recently, was admitted in 1879, and until a few years ago was the senior partner in the long-established firm of Messrs. Boulton, Sons & Sandeman, of Clerkenwell. He held the office of Solicitor to the old Vestry of Clerkenwell when it became merged in the Metropolitan Borough of Finsbury. Mr. Sandeman was very keen on politics, and was Chairman of the local Conservative Association. He was a member of the Church of Scotland, and was the legal adviser of St. Columba's Church, Pont-street, for many years.

MR. A. KEEN.

Mr. Archibald Keen, of Budleigh Salterton, who was Master of the Supreme Court of Chancery from 1912 until last year, died on Sunday, the 21st August, at the age of seventy-two. He was a former President of The Law Society.

MR. S. F. BUTCHER.

Mr. Samuel Foster Butcher, O.B.E., solicitor, of Bury, H.M. Coroner for Lancashire, died from heart failure whilst playing golf on Saturday, the 20th August, at the age of seventy-three. Admitted in 1881, he was the oldest solicitor in Bury, and had been Coroner for forty-three years.

MR. D. H. WITHERINGTON.

Mr. Duncan Henry Witherington, retired solicitor, of Crowthorne, died on Friday, the 12th August, at the age of eighty-three. Born at Sonning in 1848, he was educated at Bradfield and was admitted a solicitor in 1871 after serving his articles in London. He went to Reading soon afterwards and joined the late Mr. William Blandy as a partner in the firm of Messrs. Blandy & Witherington. From 1895 until the end of last year Mr. Witherington practised in Reading on his own account. He was Secretary of the local Law Society for some years.

MR. J. C. KING.

Mr. John Charles King, solicitor, of Barnes, sole partner in the firm of Messrs. Metcalfe, Sharpe & King, of Chancery-lane, died on Wednesday, the 17th August, at the age of fifty-seven. He was educated at King's College School, and having served his articles with Messrs. Woodruff, of Dover-street, W., he was admitted a solicitor in 1898. He left that firm later to take over the firm of Messrs. Metcalfe, Sharpe & King, at the death of the second partner, the senior partner being already deceased.

MR. E. LUCAS.

Mr. Edgar Lucas, solicitor, of Chelsea, a member of the firm of Messrs. Lucas & Sons, of Surrey-street, W.C., died recently whilst on holiday in Italy in his eighty-seventh year. Mr. Lucas was admitted in 1872 and was taken into partnership with his father Mr. Joseph Lucas in 1874. He remained an active member of the firm until his death.

MR. J. HALL-WRIGHT.

Mr. James Hall-Wright, retired solicitor, of Moseley, died there recently at the age of eighty-two. He was admitted a solicitor in 1871, and was in practice in Birmingham for over forty years. He was a former president of the Robin Hood Golf Club.

MR. C. H. COURT.

Mr. Cecil Hales Court, solicitor, a partner in the firm of Messrs. W. H. Court and Son, solicitors, of Grosvenor-street, died on Thursday, the 18th August. He was admitted in 1913.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Sir John Leach, who was born on the 28th August, 1760, started life as pupil to an architect and even got so far as designing a house which actually reached completion. Circumstances, however, diverted the course of his career and he went to the Bar. Success waited upon him and he entered Parliament where his opposition to a motion for inquiring into the expenditure of £100,000 granted by Parliament for the outfit of the Prince Regent proved extremely useful to the royal gentleman. Leach became his confidential adviser and soon afterwards left Parliament to become Chancellor of the Duchy of Cornwall. In 1818, he became Vice-Chancellor, at an increased salary, though in the Commons he had opposed the creation of the office. In 1828, he became Master of the Rolls and was so near to the Woolsack as to be disappointed when Brougham was made Chancellor. Irritable and dictatorial in court, he avoided the company of lawyers and moved entirely in the most fashionable society, his ambition being to unite the character of a fine gentleman and a great lawyer. In private, his manners were amiable and courteous, but finical and affected.

TEMPERATURES, HIGH AND LOW.

When during the recent heat-wave a prisoner at Marylebone complained of being kept in a cell with no open windows, a police inspector informed the court that the temperature therein was 63 degrees. Thereupon, Mr. Halkett told the man that he was "favoured to be kept in such a cool place." This learned magistrate was at one time very particular with regard to variations of heat and cold, and on this topic a good story survives from his sojourn at Lambeth Police Court. One cold morning, on coming into court, he examined the thermometer and exclaimed: "Only 60! I can't sit here to-day." On the morrow, therefore, the careful usher took the precaution of warming the instrument a little at the fire, but unfortunately rather exaggerated the treatment, for when

the magistrate glanced at it he exclaimed: "Good heavens! 90 to-day! As much too hot this morning as it was too cold yesterday."

THE USE OF FIREARMS.

When some young men were fined at Welwyn recently for wounding a boy in the ankle with a shot fired from a motor car, they pleaded that they had no intention of hurting anyone, but only wanted to frighten the lad. The incident brings to mind a notable piece of muddled admonition which once fell from a former magistrate of the Westminster Police Court, Mr. Sheil. A man was charged with shooting a gun at his brother. "Had there been any ill-will between you and your brother?" asked the magistrate, and, on being told that there was none, he exclaimed: "A person who points a gun at another without intending to shoot deserves to be well flogged."

PERSONAL PREFERENCE.

In excusing her husband who had not appeared at Old Street Police Court in answer to a summons, a woman recently told Mr. Snell: "Well, sir, the fact is he doesn't like you as a magistrate. He much prefers Sir William Clarke Hall." In much the same spirit was the protest of the woman who refused to be tried by a certain chairman of quarter sessions and attempted to insist on being sent before a colleague who apparently had earned her complete confidence. "No, my lord," she cried, "I'll be tried by the other judge or not at all." "But he can't try you," she was told. "Can't try me!" she exclaimed contemptuously, "why he's tried me twice before!" Strangely enough she was equally fortunate with a new tribunal and secured her third acquittal.

Rules and Orders.

THE COUNTY COURTS (EXTENDED JURISDICTION) ORDER IN COUNCIL, 1932.

At the Court at Buckingham Palace, the 8th day of August, 1932.

PRESENT.—The King's Most Excellent Majesty in Council.

Whereas it is enacted by section 5 of the County Courts Act, 1903,(*a*) that His Majesty may by Order in Council provide that actions in which the plaintiff claims a sum exceeding £50 by virtue of the said Act shall be tried in any Court where His Majesty is satisfied that due provision has been made for the trial of such actions without interference with the ordinary jurisdiction of the Court:

And whereas His Majesty is satisfied that due provision has been made in every County Court for the trial of such actions as aforesaid without interference with the ordinary jurisdiction of the Court:

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. Actions in which the plaintiff claims a sum exceeding £50 by virtue of the County Courts Act, 1903, shall be tried in the Court in which the action was commenced.

2. The following Orders shall be revoked:—

The County Courts Order in Council, 1924.(*b*)

The County Courts (Extended Jurisdiction) Order in Council, 1917.(*c*)

The County Courts (Extended Jurisdiction) Order in Council, 1928.(*d*)

The County Courts (Extended Jurisdiction) Order in Council, 1930.(*e*)

The County Courts (Extended Jurisdiction) Order in Council, 1931.(*f*)

The County Courts (Extended Jurisdiction No. 2) Order in Council, 1931.(*g*)

3. Nothing in this Order shall affect any power to transfer an action from one Court to another under any provision of the County Courts Act, 1888,(*h*) or of the County Courts Act, 1919.(*i*)

4. This Order may be cited as the County Courts (Extended Jurisdiction) Order in Council, 1932, and shall come into operation on the 1st day of November, 1932.

M. P. A. Hankey.

(*a*) 3 E. 7, c. 42. (*b*) S.R. & O. 1924 (No. 1450), p. 194.
(*c*) S.R. & O. 1927 (No. 254), p. 294. (*d*) S.R. & O. 1928 (No. 85), p. 384.
(*e*) S.R. & O. 1930 (No. 901), p. 400. (*f*) S.R. & O. 1931 (No. 129), p. 163.
(*g*) S.R. & O. 1931 (No. 717), p. 164. (*h*) 51-2 V. c. 43.
(*i*) 9-10 G. 5, c. 73.

THE HOUSING CONSOLIDATED AMENDMENT REGULATIONS, 1932, DATED AUGUST 11, 1932, MADE BY THE MINISTER OF HEALTH UNDER THE HOUSING ACTS, 1925 AND 1930 (15 & 16 GEO. 5. c. 14 AND 20 & 21 GEO. 5. c. 39).

Whereas by Part II of the Housing Consolidated Regulations, 1925,(*) (hereinafter referred to as "the principal Regulations") made by the Minister of Health under the Housing Act, 1925, provision is made in regard to the procedure for the compulsory purchase by a local authority of land for the purposes of Part III of the Housing Act, 1925 and by Part IV of the principal regulations provision is made in regard to the inspection by a local authority of their district:

And whereas in consequence of the passing of the Housing Act, 1930 it is expedient to amend the principal regulations:

Now therefore the Minister of Health in pursuance of the powers conferred on him by the Housing Acts, 1925 and 1930 and of all other powers enabling him in that behalf hereby make the following Regulations:—

1. These Regulations may be cited as the Housing Consolidated Amendment Regulations, 1932 and shall be read as one with the principal Regulations and these regulations and the principal regulations may be cited together as the Housing Consolidated Regulations, 1925 and 1932.

2. The provisions contained in Part II of the principal Regulations and the form set out in the First Schedule thereto are hereby revoked.

3. The following provisions shall be substituted for the provisions contained in Article 28 in Part IV of the principal Regulations:—

"28. The inspection under and for the purposes of Section 8 of the Act shall be made by the Medical Officer of Health, or by an Officer designated by the Local Authority but acting under his direction and supervision and the Officer making inspection of any house shall examine the state of the house in relation to the following matters, namely:

(1) The adequacy and accessibility of the water supply;

(2) The arrangements for preventing the contamination of the water supply;

(3) The adequacy and accessibility of sanitary accommodation or of other conveniences;

(4) Drainage;

(5) The condition of the house in regard to light, the free circulation of air dampness and cleanliness;

(6) The paving, drainage and sanitary condition of any court yard or passage or outhouses belonging to or occupied with the house;

(7) The arrangements for the deposit of refuse and ashes;

(8) The existence of any room which would by virtue of subsection (1) of section 18 of the Act of 1925 be unfit for human habitation;

(9) Any defects in other matters which may tend to render the house in any respect unfit for human habitation;

(10) The extent to which by reason of disrepair or sanitary defects as defined in section 62 of the Housing Act, 1930 the house falls short of the provisions of any byelaws in operation in the district or of the general standard of housing accommodation for the working classes in the district."

4. The following provisions shall be substituted for the provisions contained in Article 31 in Part IV of the principal Regulations:—

"31. The Medical Officer in his Annual Report shall state in tabular form:—

(1) The number of houses which on inspection were considered to be unfit for human habitation;

(2) The number of houses the defects in which were remedied in consequence of informal action by the Local Authority or their Officers;

(3) The number of representations made to the Local Authority with a view to (*a*) the serving of notices requiring the execution of works or (*b*) the making of demolition or closing orders;

(4) The number of notices served requiring the execution of works;

(5) The number of houses which were rendered fit after service of formal notices;

(6) The number of demolition or closing orders made;

(7) The number of houses in respect of which an undertaking was accepted under subsection (2) of Section 19 of the Housing Act, 1930;

(8) The number of houses demolished."

Given under the official seal of the Minister of Health this eleventh day of August nineteen hundred and thirty-two.

(L.S.) *R. B. Cross*, Assistant Secretary, Ministry of Health.

* S.R. & O. 1925 (No. 866), p. 513.

TABLE OF CASES previously reported in current volume.—Part II.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. A. RALPH THOMAS be appointed Recorder of Gloucester, to succeed Mr. C. F. Vachell, K.C., who has resigned. Mr. A. R. Thomas, B.C.L., was called to the Bar by the Middle Temple in 1902 and is a member of the Oxford Circuit.

The King has been pleased to approve a recommendation of the Home Secretary that Mr. RHYS HOPKIN MORRIS be appointed a Metropolitan Police Magistrate, to fill the vacancy caused by the death of Mr. Arthur Edmund Gill.

Mr. REUBEN COHEN, solicitor, a member of the firm of Messrs. Reuben Cohen & Co., of Stockton-on-Tees, has been appointed Registrar of the Middlesbrough County Court. Mr. Cohen was admitted a solicitor in 1902.

Professional Announcement.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Walter Annis Attenborough, of Bedford, barrister-at-law, Deputy Recorder of Birmingham, 1921-25, left estate of the value of £94,188, with net personalty £31,636.

Mr. Arthur Edmund Gill, of Ockley, and late of Brick-court, Temple, Metropolitan Police Court Magistrate, formerly Counsel to the London Bankers' Protection Association, and Junior Counsel to the Treasury at the Central Criminal Court, left estate of the gross value of £20,671, with net personalty £15,769.

Mr. John Moore Hayton, solicitor, Town Clerk of South Shields, left £24,170, with net personalty £21,512.

Mr. Alfred Jackson, solicitor, of Glenthorne, Barry, left £18,295, with net personalty £18,163.

REPAIRS IN THE MIDDLE TEMPLE.

Extensive repairs are being carried out in the Middle Temple during the Long Vacation, and scaffolding has been erected before some of the oldest buildings. The brickwork is being re-pointed and strengthened where necessary, but it appears that the buildings under repair are in excellent condition for their age.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 8th September, 1932.

	Middle Price 24 Aug. 1932.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	105½	3 15 10	3 13 0
Consols 2½%	71	3 10 5	—
War Loan 5% 1929-47 Assented	98½xb	3 11 7	—
War Loan 4½% 1925-45	102½	4 7 10	—
Funding 4% Loan 1960-90	106½	3 15 1	3 12 6
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	104½xd	3 16 7	3 15 0
Conversion 5% Loan 1944-64	114	4 7 9	3 11 0
Conversion 4½% Loan 1940-44	108	4 3 4	3 6 10
Conversion 3½% Loan 1961 or after	98½	3 11 1	—
Local Loans 3% Stock 1912 or after	83½	3 11 10	—
Bank Stock	310	3 17 5	—
India 4½% 1950-55	101	4 9 1	4 8 4
India 3½% 1931 or after	78½	4 9 2	—
India 3% 1948 or after	67½	4 8 11	—
Sudan 4½% 1939-73	105	4 5 9	3 12 4
Sudan 4% 1974 Redeemable in part after 1950	105	3 16 2	3 12 4
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	100	3 0 0	3 0 0
Colonial Securities.			
Canada 3% 1938	97½	3 1 6	3 9 5
*Cape of Good Hope 4% 1916-36	101	3 19 2	—
Cape of Good Hope 3½% 1929-49	95½	3 13 4	3 17 3
Ceylon 5% 1960-70	108	4 12 7	4 9 8
*Commonwealth of Australia 5% 1945-75	101	4 19 0	4 17 10
Gold Coast 4½% 1956	106	4 4 11	4 1 10
*Jamaica 4½% 1941-71	104	4 6 6	3 18 9
*Natal 4% 1937	101	3 19 2	3 15 1
New South Wales 4½% 1935-45	90½	4 19 5	5 10 11
*New South Wales 5% 1945-65	98½	5 1 6	5 1 10
*New Zealand 4½% 1945	99½	4 10 5	4 11 0
*New Zealand 5% 1946	103½	4 16 7	4 12 9
Nigeria 5% 1950-60	111	4 10 1	4 1 9
*Queensland 5% 1940-60	97	5 3 1	5 4 1
*South Africa 5% 1945-75	106½	4 13 11	4 6 9
*South Australia 5% 1945-75	98½	5 1 6	5 1 9
*Tasmania 5% 1945-75	100½	4 19 6	4 19 0
*Victoria 5% 1945-75	98½	5 1 6	5 1 9
*West Australia 5% 1945-75	98½	5 1 6	5 1 9
Corporation Stocks.			
Birmingham 3% 1947 or after	82½	3 12 9	—
*Birmingham 5% 1946-56	112	4 9 3	3 17 6
*Cardiff 5% 1945-65	106½xd	4 13 11	4 6 9
Croydon 3% 1940-60	93	3 4 6	3 7 9
*Hastings 5% 1947-67	111½	4 9 8	3 19 4
Hull 3½% 1925-55	97½	3 11 10	3 13 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	96	3 12 11	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	70	3 11 5	—
London County 3% Consolidated Stock after 1920 at option of Corporation	83	3 12 3	—
Manchester 3% 1941 or after	82½	3 12 9	—
Metropolitan Water Board 3% "A" 1963-2003	85	3 10 7	3 11 8
Do. do. 3% "B" 1934-2003	85	3 10 7	3 11 8
Middlesex C.C. 3½% 1927-47	98	3 11 5	3 13 6
Do. do. 4½% 1950-70	110	4 1 10	3 14 6
Nottingham 3% Irredeemable	81½	3 13 7	—
*Stockton 5% 1946-66	109½	4 11 4	4 1 10
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	97	4 2 6	—
Gt. Western Rly. 5% Rent Charge	109½	4 11 4	—
Gt. Western Rly. 5% Preference	69	7 5 0	—
L. Mid. & Scot. Rly. 4% Debenture	85½	4 13 7	—
L. Mid. & Scot. Rly. 4% Guaranteed	70½	5 13 6	—
L. Mid. & Scot. Rly. 4% Preference	35½	11 5 4	—
Southern Rly. 4% Debenture	92¼	4 6 6	—
Southern Rly. 5% Guaranteed	98	5 2 0	—
Southern Rly. 5% Preference	56½	8 17 0	—
‡L. & N.E. Rly. 4% Debenture	78½	5 1 11	—
‡L. & N.E. Rly. 4% 1st Guaranteed	60	6 13 4	—
‡L. & N.E. Rly. 4% 1st Preference	26½	15 1 11	—

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.